

Rule 262. Proceeding to Modify Decision in Estate Tax Case Involving Section 6166 Election

(a) **Commencement of Proceeding:** A proceeding to modify a decision in an estate tax case pursuant to Code Section 7481(d) shall be commenced by filing a motion with the Court accompanied by a proposed form of decision. The petitioner shall place on the motion and the proposed form of decision the same docket number as that of the action in which the Court entered the decision which the petitioner now seeks to modify.

(b) **Content of Motion:** A motion to modify a decision filed pursuant to this Rule shall contain the following:

- (1) The petitioner's identification number.
- (2) The name and current mailing address of each fiduciary authorized to act on behalf of the petitioner.
- (3) A copy of the decision entered by the Court which the petitioner now seeks to modify.

(4) A statement that the time for payment by the petitioner of an amount of tax imposed by Code Section 2001 has been extended pursuant to Code Section 6166.

(5) A schedule setting forth—

(A) the amount of interest paid by the petitioner on any portion of the tax imposed by Code Section 2001 on the petitioner for which the time of payment has been extended under Code Section 6166;

(B) the amount of interest on any estate, succession, legacy, or inheritance tax imposed by a State on the petitioner during the period of the extension of time for payment under Code Section 6166; and

(C) the date that each such amount of interest was paid by the petitioner.

(6) A statement describing the nature of any dispute within the purview of Code Section 7481(d), or if no such dispute exists, then a statement to that effect.

(7) If the petitioner requests an evidentiary or other hearing on the motion, then a statement of the reasons why the motion cannot be disposed of by the Court without a hearing. For the circumstances under which the Court will direct a hearing, see paragraph (d) of this Rule.

(c) **Response by Commissioner in Unagreed Case:** If a dispute exists between the parties regarding either the petitioner's right to relief under Code Section 7481(d) or the amount of interest deductible as an administrative expense under Code Section 2053, then the Commissioner shall, within 60 days after service of a motion filed pursuant to this Rule, file a written response accompanied by a proposed form of decision. The response shall identify the nature of the dispute, shall specifically admit or deny each allegation set forth in the petitioner's motion, and shall state the Commissioner's position in respect of each disputed matter. If the Commissioner agrees with the petitioner's request for a hearing, or if the Commissioner requests a hearing, then the response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a

hearing. If the Commissioner opposes the petitioner's request for a hearing, then the response shall include a statement of the reasons why no hearing is required.

(d) **Disposition of Motion:** A motion to modify a decision filed pursuant to this Rule will ordinarily be disposed of without an evidentiary or other hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(e) **Recognition of Counsel:** Counsel recognized by the Court in the action in which the Court entered the decision which the petitioner now seeks to modify will be recognized in a proceeding commenced under this Rule. Counsel not so recognized must file an entry of appearance pursuant to Rule 24(a)(3) or a substitution of counsel pursuant to Rule 24(d).

(f) **Cross-Reference:** For the need to move the Court to retain its official case file in the action with respect to which the petitioner seeks to modify the decision, see Rule 157.

TITLE XXVI.—ACTIONS FOR ADMINISTRATIVE COSTS

Rule 270. General

(a) **Applicability:** The Rules of this Title XXVI set forth the special provisions which apply to actions for administrative costs under Code Section 7430(f)(2). Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for administrative costs.

(b) **Definitions:** As used in the Rules in this Title—

(1) "Reasonable administrative costs" means the items described in Code Section 7430(c)(2).

(2) "Attorney's fees" include fees paid or incurred for the services of an individual (whether or not an attorney) admitted to practice before the Court or authorized to practice before the Internal Revenue Service. For the procedure for admission to practice before the Court, see Rule 200.

(3) "Administrative proceeding" means any procedure or other action before the Internal Revenue Service.

(c) **Jurisdictional Requirements:** The Court does not have jurisdiction of an action for administrative costs under this Title unless the following conditions are satisfied:

(1) The Commissioner has made a decision denying (in whole or in part) an award for reasonable administrative costs under Code Section 7430(a).

(2) A petition for an award for reasonable administrative costs is filed with the Court.

(d) **Burden of Proof:** For the rules regarding the burden of proof in claims for administrative costs, see Rule 232(e).

INTERIM AMENDMENT

For interim amendment of this Rule, see provisions set out after the Appendices to the Rules.

Rule 271. Commencement of Action for Administrative Costs

(a) **Commencement of Action:** An action for an award for reasonable administrative costs under Code Section 7430(f)(2) shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule 22, relating to the place and manner of filing the petition; and Rule 32, relating to the form of pleadings.

(b) **Content of Petition:** A petition filed pursuant to this Rule shall be entitled "Petition for Administrative Costs (Sec. 7430(f)(2))." Such a petition shall be substantially in accordance with Form 13 shown in Appendix I, or shall, in the alternative, contain the following:

(1) In the case of a petitioner other than a corporation, the petitioner's name and legal residence; in the case of a corporate petitioner, the petitioner's name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address and identification number (e.g., Social Security number or employer identification number). The mailing address, legal residence, and principal place of business, or principal office or agency, shall be stated as of the date that the petition is filed.

(2) The date of the decision denying an award for administrative costs in respect of which the petition is filed, and the City and State of the office of the Internal Revenue Service which issued the decision.

(3) The amount of administrative costs claimed by the petitioner in the administrative proceeding; the amount of administrative costs denied by the Commissioner; and, if different from the amount denied, the amount of administrative costs now claimed by the petitioner.

(4) Clear and concise lettered statements of the facts on which the petitioner relies to establish that, in the administrative proceeding, the petitioner substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented in the administrative proceeding.

(5) A statement that the petitioner meets the net worth requirements of Section 2412(d)(2)(B) of Title 28, United States Code (as in effect on October 22, 1986).

(6) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(7) A copy of the decision denying (in whole or in part) an award for reasonable administrative costs in respect of which the petition is filed.

(c) **Filing Fee:** The fee for filing a petition for administrative costs shall be \$60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information that the petitioner is unable to make such payment.

EFFECTIVE DATE OF AMENDMENT

Amendment of par. (b) effective for actions for administrative costs commenced with respect to proceed-

ings commenced after July 30, 1996, except that amendment reflecting renumbering of former Form 16 is effective as of Aug. 1, 1998.

Rule 272. Other Pleadings

(a) **Answer:** (1) *In General:* The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(2) *Additional Requirement for Answer:* In addition to the specific admission or denial of each material allegation in the petition, the answer shall contain the following:

(A) Clear and concise lettered statements of the facts on which the Commissioner relies to establish that, in the administrative proceeding, the Commissioner's position was substantially justified;

(B) A statement whether the Commissioner agrees that the petitioner substantially prevailed in the administrative proceeding with respect to either the amount in controversy or the most significant issue or set of issues presented in the administrative proceeding;

(C) A statement whether the Commissioner agrees that the amount of administrative costs claimed by the petitioner is reasonable;

(D) A statement whether the Commissioner agrees that the petitioner meets the net worth requirements as provided by law; and

(E) The basis for the Commissioner's disagreement with any such allegations by the petitioner.

(3) *Effect of Answer:* Every material allegation set forth in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted. The failure to include in the answer any statement required by subparagraph (2) of this paragraph shall be deemed to constitute a concession by the Commissioner of that matter.

(b) **Reply:** A reply to the answer shall not be filed in an action for administrative costs unless the Court, on its own motion or upon motion of the Commissioner, shall otherwise direct. Any reply shall conform to the requirements of Rule 37(b). In the absence of a requirement of a reply, the provisions of the second sentence of Rule 37(c) shall not apply and the material allegations of the answer will be deemed denied.

EFFECTIVE DATE OF AMENDMENT

Amendment of par. (a)(2) effective for actions for administrative costs commenced with respect to proceedings commenced after July 30, 1996.

Rule 273. Joinder of Issue in Action for Administrative Costs

An action for administrative costs shall be deemed at issue upon the filing of the answer.

Rule 274. Applicable Small Tax Case Rules

Proceedings in an action for administrative costs shall be governed by the provisions of the following Small Tax Case Rules (see Rule 170) with respect to the matters to which they apply: Rule 174 (representation); Rule 176 (preliminary hearings); Rule 177 (trial); Rule 178 (transcript of proceedings); and Rule 179 (number of copies of papers).

TITLE XXVII.—ACTIONS FOR REVIEW OF
FAILURE TO ABATE INTEREST

Rule 280. General

(a) **Applicability:** The Rules of this Title XXVII set forth the provisions which apply to actions for review of the Commissioner's failure to abate interest under Code Section 6404. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for review.

(b) **Jurisdiction:** The Court shall have jurisdiction of an action for review of the Commissioner's failure to abate interest under this Title when the following conditions are satisfied:

(1) The Commissioner has mailed a notice of final determination not to abate interest under Code Section 6404.

(2) A petition for review of the Commissioner's failure to abate interest is filed with the Court within the period specified in Code Section 6404(g) by a taxpayer who meets the requirements of Code Section 7430(c)(4)(A)(ii).

EFFECTIVE DATE

Title XXVII sets forth procedures for actions under section 6404(g) of this title, as added by section 302 of the Taxpayer Bill of Rights 2, Pub. L. 104-168, 110 Stat. 1452. Section 6404(g) of this title provides for review of the Commissioner's failure to abate interest and is applicable to requests for abatement after July 30, 1996, the date of enactment of the Taxpayer Bill of Rights 2. Similarly, the Rules of Title XXVII are effective with respect to actions for review of the Commissioner's failure to abate interest pertaining to requests for abatement after July 30, 1996.

Rule 281. Commencement of Action for Review of Failure to Abate Interest

(a) **Commencement of Action:** An action for review of the Commissioner's failure to abate interest under Code Section 6404 shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule 22 relating to the place and manner of filing the petition; and Rule 32, regarding the form of pleadings.

(b) **Content of Petition:** A petition filed pursuant to this Rule shall be entitled "Petition for Review of Failure to Abate Interest under Code Section 6404" and shall contain the following:

(1) In the case of a petitioner other than a corporation, the petitioner's name and legal residence; in the case of a corporate petitioner, the petitioner's name and principal place of business or principal office or agency; and, in all cases, the petitioner's mailing address and identification number (e.g., Social Security number or employer identification number). The mailing address, legal residence, and principal place of business, or principal office or agency, shall be stated as of the date that the petition is filed.

(2) The date of the notice of final determination not to abate interest and the City and State of the office of the Internal Revenue Service which issued the notice.

(3) The year or years or other periods to which the failure to abate interest relates.

(4) Clear and concise lettered statements of the facts on which the petitioner relies to es-

tablish that the Commissioner's final determination not to abate interest was an abuse of discretion.

(5) A statement that the petitioner meets the requirements of Code Section 7430(c)(4)(A)(ii).

(6) The signature, mailing address, and telephone number of each petitioner or each petitioner's counsel, as well as counsel's Tax Court bar number.

(7) As an attachment, a copy of the notice of final determination denying (in whole or in part) the requested abatement.

(c) **Filing Fee:** The fee for filing a petition for review of failure to abate interest shall be \$60, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information that the petitioner is unable to make such payment.

Rule 282. Designation of Place of Trial

At the time of filing a petition for review of failure to abate interest, a designation of place of trial shall be filed in accordance with Rule 140.

Rule 283. Other Pleadings

(a) **Answer:** The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(b) **Reply:** For provisions relating to the filing of a reply, see Rule 37.

Rule 284. Joinder of Issue in Action for Review of Failure to Abate Interest

An action for review of the Commissioner's failure to abate interest under Code Section 6404 shall be deemed at issue as provided by Rule 38.

TITLE XXVIII.—ACTIONS FOR REDETERMINATION OF EMPLOYMENT STATUS¹

Rule 290. General

(a) **Applicability:** The Rules of this Title XXVIII set forth the provisions which apply to actions for redetermination of employment status under Code Section 7436. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for redetermination.

(b) **Jurisdiction:** The Court shall have jurisdiction of an action for redetermination of employment status under this Title when the following conditions are satisfied:

(1) In connection with an audit of any person, there is an actual controversy involving a determination by the Commissioner as part of an examination that:

(A) One or more individuals performing services for such person are employees of such person for purposes of subtitle C of the Code, or

¹Title XXVIII provided on an interim basis pending formal publication in the Reports of the Court by the Government Printing Office.